

**SUPREME COURT MINUTES
THURSDAY, AUGUST 13, 1998
SAN FRANCISCO, CALIFORNIA**

S058027 People, Plaintiff and Respondent

v.

Jose Luis Mendoza et al., Defendants and Appellants

We reverse the judgment of the Court of Appeal and remand the matter for further proceedings consistent with this opinion.

Chin, J.

We Concur:

George, C.J.

Kennard, J.

Werdegar, J.

Concurring Opinion by Mosk, J.

Dissenting Opinion by Baxter, J.

Dissenting Opinion by Brown, J.

I Concur:

Baxter, J.

S057084 People, Respondent

v.

Justin Paul et al., Appellants

The time for granting or denying a rehearing in the above cause is hereby extended to and including October 21, 1998, or the date upon which a rehearing is either granted or denied, whichever occurs first.

S068992 In re Terry Price

on

Habeas Corpus

Pursuant to written request of petitioner, the above entitled petition for writ of habeas corpus is ordered withdrawn.

S069254 In re Gerardo Ruiz Jimenez
 on
 Habeas Corpus

Pursuant to written request of petitioner, the above entitled petition for review is ordered withdrawn.

S071685 In re Hershey Williams
 on
 Habeas Corpus

Pursuant to written request of petitioner, the above entitled petition for review is ordered withdrawn.

S028804 People, Respondent
 v.
 Jessie Ray Moffett, Appellant

Respondent's motion to abate appeal, filed on July 27, 1998, is granted. As indicated in a certified copy of a certificate of death, appellant Jessie Ray Moffett died in San Quentin State Prison on May 2, 1998. All proceedings in *People v. Jessie Ray Moffett*, case No. S028804, are permanently abated, and the Superior Court for the County of San Diego is directed to enter an order to that effect in case no. CR103094. (*People v. Dail* (1943) 22 Cal.2d 642, 659; *People v. Bandy* (1963) 216 Cal. App.2d 458, 466.

S049666 In re Constantino Carrera
 on
 Habeas Corpus

The petition for a writ of habeas corpus is denied.

All claims are denied on the merits.

Claims A, B, C, D, E, F, G, H, and L are also denied on the procedural ground (see *Harris v. Reed* (1989) 489 U.S. 255, 264, fn. 10) that they are untimely. They are substantially delayed without good cause and they do not come within any exception to the bar of untimeliness. (Supreme Court Policies Regarding Cases Arising From Judgments of Death, Policy 3; see *In re Robbins* (Aug. 3, 1998, S048929) __ Cal.4th __, __-__, __, fn. 10 [typed opn., pp. 5-6,

18]; *In re Gallego* (Aug. 3, 1998, S042737) __ Cal.4th __, __-__, ____, fn. 13 [typed opn., pp. 1-3, 16]; *In re Clark* (1993) 5 Cal.4th 750, 767-787, 797-798; *In re Swain* (1949) 34 Cal.2d 300, 302.) Mosk, J., is of the opinion an order to show cause should issue.

Baxter, J. concurs with the disposition but would also deny claim K as untimely.

Brown, J. would deny the petition solely on the merits.

S060797 In re Richard Dean Clark
 on
 Habeas Corpus

Petition for writ of habeas corpus DENIED.

The following claims are denied as untimely under *In re Clark* (1993) 5 Cal.4th 750, 782-787, 797-798: claims V, VII, IX (except subclaims D and F), X, XII, XIII and XV.

In addition, the following claims are denied under *In re Dixon* (1953) 41 Cal.2d 756, 759, because they could have been, but were not, raised on appeal: claims V (except subclaims F and H, and except subclaim G insofar as it concerns prospective juror Louis Rinaldi), VII, XII and XIII.

In addition, the following claim is denied under *In re Waltreus* (1965) 62 Cal.2d 218, 225, because it was previously raised and rejected on appeal: subclaim G of claim V, insofar as it concerns prospective juror Louis Rinaldi.

In addition, all claims are denied on the merits. (See *Harris v. Reed* (1989) 489 U.S. 255, 264, fn. 10.)

Mosk, J., and Brown, J., would deny the petition solely on the merits.

S062394 In re Constantino Carrera
 on
 Habeas Corpus

The petition for a writ of habeas corpus is denied.

All claims are denied on the merits, and on the following procedural grounds. (See *Harris v. Reed* (1989) 489 U.S. 255, 264, fn. 10.)

All claims are denied as untimely. They are substantially delayed without good cause and they do not come within any exception to the bar of untimeliness. (Supreme Court Policies

Regarding Cases Arising From Judgments of Death, Policy 3; *In re Clark* (1993) 5 Cal.4th 750, 767-787, 797-798; *In re Swain* (1949) 34 Cal.2d 300, 302.)

The first claim for relief is denied on the ground that it could have been but was not raised on appeal and does not come within any exception permitting its consideration on habeas corpus. (*In re Harris* (1993) 5 Cal.4th 813, 829-841; *In re Dixon* (1953) 41 Cal.2d 756, 759.)

Mosk, J., is of the opinion an order to show cause should issue. Brown, J., would deny the petition solely on the merits.

S005502 People, Respondent

v.

David Keith Rogers, Appellant

On application of respondent and good cause appearing, it is ordered that the time to serve and file respondent's brief is extended to and including September 9, 1998.

S012279 People, Respondent

v.

David Allan Lucas, Appellant

On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to and including October 6, 1998.

S016081 People, Respondent

v.

Maureen McDermott, Appellant

On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to and including September 8, 1998.

S020161 People, Respondent

v.

Tauno Waidla, Appellant

On application of respondent and good cause appearing, it is ordered that the time to serve and file respondent's brief is extended to and including September 16, 1998.

S062533 In re James David Majors
 on
 Habeas Corpus

On application of petitioner and good cause appearing, it is ordered that the time to serve and file petitioner's reply to informal response to the petition for writ of habeas corpus is extended to and including August 31, 1998.

No further extensions of time are contemplated.

S065541 In re Keith Anthony Somers
 on
 Habeas Corpus

On application of petitioner and good cause appearing, it is ordered that the time to serve and file petitioner's reply to the informal response is extended to and including September 4, 1998.

S065575 In re Steve Allen Champion
 on
 Habeas Corpus

On application of respondent and good cause appearing, it is ordered that the time to serve and file respondent's informal response to the petition for writ of habeas corpus is extended to and including September 4, 1998.

S070296 Gertrude M. Lamden, Appellant
 v.
 La Jolla Shores Clubdominium Homeowners Association,
 Respondent

On application of respondent and good cause appearing, it is ordered that the time to serve and file the opening brief on the merits is extended to and including September 1, 1998.

S067443 People, Appellant
 v.
 Raymond Lawrence Frazier, Respondent

The application of California Lawyers for Criminal Justice for permission to file an amicus curiae brief in support of respondent is hereby granted.

An answer thereto may be served and filed by any party within twenty days of the filing of the brief.

S070818 In re **Matthew P. Todd** on Discipline

It is ordered that **Matthew P. Todd** be suspended from the practice of law for one year and until he makes restitution to Kenneth A. Maranga of Garcia, Emmons & Maranga (or the Client Security Fund, if appropriate) in the amount of \$902.00, plus 10% interest per annum from July 21, 1994; to Kenneth A. Maranga of Garcia, Emmons & Maranga (or the Client Security Fund, if appropriate) in the amount of \$660.00, plus 10% interest per annum from September 5, 1994; and to Kenneth A. Maranga of Garcia, Emmons & Maranga (or the Client Security Fund, if appropriate) in the amount of \$654.00, plus 10% interest per annum from January 2, 1995, and furnishes satisfactory proof of said restitution to the Probation Unit, State Bar of California, that execution of suspension be stayed, and that he be placed on probation for two years subject to the conditions of probation, including restitution, recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed April 21, 1998. It is further ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar and shall be added to and become part of the membership fee for the next calendar year. (Bus. & Prof. Code, § 6140.7.)

S070810 In re **Richard Alan Hofman** on Discipline

It is ordered that **Richard Alan Hofman** be suspended from the practice of law for six months and until he makes restitution to Patricia Schulte in the amount of \$1,000, plus 10% interest from September 30, 1996, and to Adel Milkail in the amount of \$1,500 plus 10% interest from September 30, 1996, and furnishes satisfactory proof thereof to the State Bar Probation Unit, that execution of suspension be stayed, and that he be placed on probation for two years subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Regarding Stipulation filed April 3, 1998. It is further ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar pursuant to Business and

Professions Code section 6086.10 and are payable in accordance with Business and Professions Code section 6140.7 (as amended effective January 1, 1997).

S070820 In re **Gerald Franklin Canevaro** on Discipline

It is ordered that **Gerald Franklin Canevaro** be suspended from the practice of law for ninety days and until he becomes eligible to file for reinstatement to practice in the State of New Mexico as recommended by the Hearing Department of the State Bar Court in its decision filed April 3, 1998. It is also ordered that he attend the State Bar Ethics School during the period of his actual suspension or within one year of the effective date of this order, whichever period of time is longer. It is further ordered that he comply with rule 955, California Rules of Court, and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.* Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and those costs are payable in accordance with section 6140.7 (as amended effective January 1, 1997).

*(See Business & Professions Code, § 6126, subd. (c).)

S070821 In re **Christian William Keena** on Discipline

It is ordered that **Christian William Keena** be suspended from the practice of law for one year, that execution of suspension be stayed, and that he be placed on probation for two years subject to the conditions of probation, including payment of restitution and actual suspension for thirty days, recommended by the Hearing Department of the State Bar Court in its order regarding the stipulation filed in the State Bar Court on April 9, 1998. Costs are awarded to the State Bar pursuant to Business and Professions Code 6086.10 and shall be paid as provided by the above-mentioned stipulation or as otherwise directed by Business and Professions Code 6140.7.

S070823 In re **William Joseph Hamilton** on Discipline

It is ordered that **William Joseph Hamilton** be suspended from the practice of law for two years, that execution of suspension be stayed, and that he be placed on probation for three years subject to the conditions of probation, including 90 days actual suspension, recommended by the Hearing Department of the State Bar Court in

its decision filed February 4, 1998, as modified by its order filed March 9, 1998. It is further ordered that he comply with rule 955, California Rules of Court, and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.* Costs are awarded to the State Bar pursuant to Bus. & Prof. Code section 6086.10 and payable in accordance with Bus. & Prof. Code section 6140.7 as amended effective January 1, 1997.

S070824 In re **Gary Eugene Uhd** on Discipline

It is ordered that **Gary Eugene Uhd** be suspended from the practice of law for three years, that execution of suspension be stayed, and that he be placed on probation for three years on condition that he be actually suspended for two years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. He is further ordered to comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its decision filed April 3, 1998. The period of actual suspension shall be consecutive to the actual suspension previously imposed in S047620 (97-PM-10673). Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and are payable in accordance with section 6140.7 (as amended effective January 1, 1997).

S070825 In re **Byron Peter Halling** on Discipline

It is ordered that **Byron Peter Halling** be suspended from the practice of law for three years, that execution of suspension be stayed, and that he be placed on probation for three years on condition that he be actually suspended for two years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct and until he makes restitution to Robert Gongora, or the Client Security Fund, if it has paid, in the amount of \$1,610.51, plus 10% interest per annum from January 1, 1995, and furnishes satisfactory proof thereof to the Probation Unit, State Bar Office of Trials. He is further ordered to comply with the other conditions of probation recommended by the Hearing

Department of the State Bar Court in its decision filed February 10, 1998, as modified by its order filed March 4, 1998. He is further ordered to comply with rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.* Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and are payable in accordance with Business and Professions Code section 6140.7.

*(See Business & Professions Code, § 6126, subd. (c).)

S070834 In re **David Yoshio Nakahara** on Discipline

It is ordered that **David Yoshio Nakahara** be suspended from the practice of law for 120 days, that execution of suspension be stayed, and that he be placed on probation for two years on condition that he be actually suspended for 45 days. He is also ordered to comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed April 10, 1998. It is further ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar pursuant to Bus. & Prof. Code section 6086.10 and payable in accordance with section 6140.7 as amended effective January 1, 1997.

S070896 In re **Brian Wayne Varner** on Discipline

It is hereby ordered that **Brian Wayne Varner** be disbarred from the practice of law and that his name be stricken from the roll of attorneys. He is also ordered to comply with rule 955, California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.* Costs are to be awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and those costs are payable in accordance with section 6140.7 (as amended effective January 1, 1997).

*(See Business & Professions Code, § 6126, subd. (c).)

S070897 In re **James Stratton Shepard** on Discipline

It is hereby ordered that **James Stratton Shepard** be disbarred from the practice of law and that his name be stricken from the roll of attorneys. He is also ordered to comply with rule 955, California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.* Costs are awarded to the State Bar.

*(See Business & Professions Code, § 6126, subd. (c).)

S070901 In re **Donald W. Henry** on Discipline

It is hereby ordered that **Donald W. Henry** be disbarred from the practice of law and that his name be stricken from the roll of attorneys. He is also ordered to comply with rule 955, California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.* Costs are awarded to the State Bar.

*(See Business & Professions Code, § 6126, subd. (c).)

S070902 In re **Michael Frank Borkowski** on Discipline

It is ordered that **Michael Frank Borkowski** be suspended from the practice of law for six months, that execution of suspension be stayed, and that he be placed on probation for one year subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed May 6, 1998. Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and are payable in accordance with Business and Professions Code section 6140.7.

S070903 In re **Carlos Miguel Alcala** on Discipline

It is ordered that **Carlos Miguel Alcala** be suspended from the practice of law for three years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, that execution of suspension be stayed, and that he be placed on probation for three years on condition that he be actually suspended for 18 months and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). He is further ordered to comply with the other conditions of

probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed May 15, 1998. It is also ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) It is further ordered that he comply with rule 955, California Rules of Court, and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.* Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and are payable in accordance with Business and Professions Code section 6140.7.

*(See Business & Professions Code, § 6126, subd. (c).)

S070906 In re **Peggy R. Currie** on Discipline

It is hereby ordered that **Peggy R. Currie** be disbarred from the practice of law and that her name be stricken from the roll of attorneys. She is also ordered to comply with rule 955, California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.* Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and those costs are payable in accordance with section 6140.7 (as amended effective January 1, 1997).

*(See Business & Professions Code, § 6126, subd. (c).)

S070909 In re **Elizabeth Elliot** on Discipline

It is hereby ordered that **Elizabeth Elliot** be disbarred from the practice of law and that her name be stricken from the roll of attorneys. She is also ordered to comply with rule 955, California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.* Costs are awarded to the State Bar.

*(See Business & Professions Code, § 6126, subd. (c).)